

<b>DAVID L. KOONTZ</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 258,135
<b>STRASSER/TRUE VALUE HARDWARE</b>	)	
Respondent	)	
AND	)	
	)	
<b>RELIANCE NATIONAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

Claimant testified that he was injured on Monday, May 8, 2000, while delivering bags of concrete. Claimant said that he was lifting the 94-pound bags of concrete from the delivery van to the loading dock when, on about the fourth bag, he felt a sharp pain in his low back. Claimant described the pain as severe and unlike anything he had experienced before. After finishing the delivery claimant drove back to the store and turned in some paperwork before going home. He did not, however, report his accident that day.

Claimant said that the next morning he "was hurting extremely bad". He called work and advised Gary that he would not be in.<sup>1</sup> Again, claimant did not report a work-related accident and did not request medical treatment from his employer. Instead, claimant made an appointment on his own to see his personal physician, Dr. James Bautz.

The next day, Wednesday, claimant went to work and worked part of the day. Again, he did not report a work-related injury. The following morning, Thursday, claimant "was back down again real bad". It was then that claimant called and notified Gary of a work-related accident. He was immediately referred to Occupational Medicine for authorized treatment.

Claimant has a history of work-related injuries, including back injuries. He has received medical treatment through his employers under workers compensation for those injuries and has entered into settlements for permanent partial disability benefits. Claimant, therefore, should be somewhat familiar with the procedure for obtaining workers compensation benefits including the fact that an employer has a duty to provide medical treatment for work-related injuries and that an injured worker has a duty to notify the employer of work-related accidents. Claimant does not explain why, in this instance, he delayed reporting his injury for three days even though the injury was severe enough to cause claimant to miss work and to seek medical treatment.

Before this accident claimant had been treating with a chiropractor, Dr. Rickard J. Thomas, primarily for headaches and neck pain but also for low back complaints. Claimant saw Dr. Thomas on May 8, 2000. Dr. Thomas' office chart entries for that date contain no mention of a work-related accident and no mention of the low back. The record does not specify, however, the time of day that claimant saw Dr. Thomas. It is possible, therefore, that claimant could have seen Dr. Thomas on May 8 before his accident. But, there is no doubt that the accident had already occurred when claimant saw his personal physician, Dr. Bautz, on May 9. In fact, claimant testified he made the appointment with Dr. Bautz specifically because of his alleged May 8 low back injury at work from lifting sacks of concrete. Nevertheless, Dr. Bautz' office chart entry for that visit likewise makes no mention of claimant injuring himself lifting sacks of concrete or a work-related accident. To the contrary, the entry indicates that claimant denied experiencing any specific injury and mentioned only that he put a new room on his aunt's house a couple of days earlier. Furthermore, it shows that claimant described experiencing low back pain for the past month which was worse the past few days.

When claimant was questioned at the preliminary hearing concerning these inconsistencies, claimant's only answer was that he did not remember saying that to

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<sup>1</sup> Although Gary is not specifically identified, it appears in context he is claimant's supervisor or employer.

Dr. Bautz. Claimant acknowledged, however, that he had framed in a room for his aunt about 10 days before May 8, but he denied injuring his back at that time.

The Board generally gives some deference to an ALJ's findings where credibility is at issue and the ALJ had the opportunity to view the witnesses testify in person. While it is perplexing that a worker with claimant's experience with workers compensation claims would delay reporting a severe back injury for three days, this fact, standing alone, would not be sufficient to reverse the ALJ's Order. But, claimant fails to offer any explanation for why the office chart entry by the physician claimant says he specifically went to see because of the alleged work-related injury not only fails to contain any mention of that accident but indicates claimant specifically denied that his back condition was the result of an accident. Furthermore, according to this same medical chart entry made only one day after the alleged accident, claimant's symptoms reportedly had been ongoing for a period of days, not for one day as claimant would now have the Board believe. For these reasons, the Board concludes that claimant has failed to prove his back injury was caused by an accident at work as alleged. Accordingly, benefits should be denied.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on November 3, 2000, should be, and is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

c: Thomas R. Fields, Kansas City, KS  
Daniel N. Allmayer, Overland Park, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director